

ARKANSAS SUPREME COURT

No. CACR 85-171

KENNY HALFACRE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 15, 2007

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [CIRCUIT
COURT OF JEFFERSON COUNTY, CR
85-103]

PETITION DENIED.

PER CURIAM

In 1985, Kenny Halfacre, petitioner herein, was convicted of burglary and theft of property, and sentenced as a habitual offender to concurrent terms of thirty and twenty years' incarceration in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the convictions. *Halfacre v. State*, CACR 85-171 (Ark. App. Mar. 12, 1986). This court subsequently denied his postconviction petition to proceed pursuant to Ark. R. Crim. P. 37.¹ *Halfacre v. State*, CR 85-169 (Ark. May 5, 1986) (per curiam). Petitioner then sought a belated petition for review of the court of appeals decision. This court denied the petition. *Halfacre v. State*, 290 Ark. 312, 718 S.W.2d 945

¹Prior to July 1, 1989, a petitioner whose judgment of conviction had been affirmed on appeal was required to petition this court for relief under Criminal Procedure Rule 37.1 and gain leave from this court to proceed under the rule in the circuit court before filing a petition there. Criminal Procedure Rule 37 was abolished by this court effective July 1, 1989. *In the Matter of the Abolishment of Rule 37 and the Revision of Rule 36 of the Arkansas Rules of Criminal Procedure*, 299 Ark. Appx. 573, 770 S.W.2d 148 (1989) (per curiam). Rule 37 was reinstated in a revised form on January 1, 1991. *In the Matter of the Reinstatement of Rule 37 of the Arkansas Rules of Criminal Procedure*, 303 Ark. Appx. 746, 797 S.W.2d 458 (1990) (per curiam). The revised rule does not require petitioners to gain leave of this court before proceeding in the trial court if the petitioner was convicted after January 1, 1999.

(1986) (per curiam).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.² The petition for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

Here, petitioner alleges that the testimony of his wife at trial, which was used to convict him, should not have been allowed into evidence as the Uniform Rules of Evidence had not been properly adopted by the legislature.³ Petitioner attempted to raise this same collateral attack against the rules of evidence in his belated petition for review, after, on direct appeal, unsuccessfully attacking the trial court's allowing his wife's testimony.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). The basis for petitioner's writ fails to fall within

²For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

³Petitioner cites *Ricarte v. State*, 290 Ark. 100, 717 S.W.2d 488 (1986), as the basis for this contention. Petitioner claims that *Ricarte* held that the Rules of Evidence had been adopted by the Arkansas Legislature during an unlawful session, and thus, never became law. As a result, the trial court should not have allowed Sandra Halfacre to testify against petitioner pursuant to Evidence Rule 504. As previously noted by this court when we denied petitioner's petition to file a belated petition for review, he failed to raise the issue of unlawfulness at trial, which constituted a condition precedent in the *Ricarte* holding.

one of the four enumerated categories. *Id.*

Further, for the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error coram nobis is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005) (“*Echols Error Coram Nobis IP*” or “*Echols ECN IP*”); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975). In the instant matter, the fact that the petitioner’s wife testified at his trial could not be considered a fundamental error of fact extrinsic to the record, or hidden or unknown at trial. *Larimore, supra*; *Echols ECN II, supra*.

In a petition for writ of error coram nobis, it is the petitioner’s burden to show that the writ is warranted. Here, petitioner has failed to make a showing that the allegations contained in his petition are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in filing this petition. We deny the petition to proceed with a petition for writ of error coram nobis.

Petition denied.